

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MATERIALS RECLAMATION, INC.,

Appellant,

y.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 81-179

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a \$250 civil penalty for an alleged smoke emission in violation of respondent's Regulation I, came on for hearing before the Pollution Control Hearings Board; Gayle Rothrock, Chairman, Lawrence J. Faulk and David Akana, Members, convened at Lacey, Washington, on November 3, 1982. Gayle Rothrock presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellant was represented by Mr. J. P. Lyon, Vice President and Co-owner of Materials Reclamation, Inc. Respondent appeared by its attorney Keith D. McGoffin. The proceedings were electronically

1 recorded.

2 Having heard the testimony, having examined the exhibits and
3 having considered the contentions of the parties, the Board makes these

4 FINDINGS OF FACT

5 I

6 Pursuant to RCW 43.21B.260, respondent has filed with the Board a
7 certified copy of its Regulation I and amendments thereto, which are
8 noticed.

9 II

10 On October 6, 1981, at about 8:18 a.m., respondent's inspector
11 noticed a gray plume rising from appellant's plant (MARALCO Aluminum)
12 located at 6760 West Marginal Way, in the industrial area of Seattle,
13 Washington. The plant produces alloyed aluminum ingot out of scrap.
14 The plant site occupied two acres as the business grew to seven times
15 its original capacity. There was a good deal of old operating
16 equipment in the plant. MARALCO has moved to a new site in Kent.

17 The subject plume was emanating from bag house No. 4. The wind
18 direction was generally from the south. The sky was overcast and it
19 was raining. The inspector positioned herself east-southeast of the
20 stack at a distance of about a block and one-half to observe the
21 plume. The inspector recorded opacities ranging from 30 percent to 50
22 percent for seven consecutive minutes ending at 8:28 a.m.

23 III

24 The morning of October 6, 1981, an employee of appellant noticed
25 steaming and boiling in the furnace. He immediately set about

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 81-179

1 determining the cause of the problem. He believed it was caused by up
2 to 18 percent water absorbed by the beer cans, and, therefore, slowed
3 down the rate at which bales were put into the furnace to lessen
4 intensification of steam generation.

5 The report of upset conditions was telephoned to respondent agency
6 at 8:26 a.m.

7 Appellant contends that it should be excused from its violation by
8 Section 9.16 of respondent's Regulation I which states:

9 Emissions exceeding any of the limits
10 established by this Regulation as a direct result of
11 start-ups, periodic shutdown, or unavoidable and
12 unforeseeable failure or breakdown, or unavoidable
and unforeseeable upset or breakdown of process
equipment or control apparatus, shall not be deemed
in violation provided the following requirements are
met:

13 (1) The owner or operator of such process
14 or equipment shall immediately notify the agency of
15 such occurrence, together with the pertinent facts
16 relating thereto regarding nature of problem as well
as time, date, duration and anticipated influence on
emissions from the source.

17 (2) The owner or operator shall, upon the
18 request of the Control Officer, submit a full report
including the known causes and the preventive
measures to be taken to minimize or eliminate a
reoccurrence. (Emphasis added.)

19 IV

20 After discussing the matter with an employee of appellant, the
21 inspector issued Notice of Violation No. 18594 at 8:56 a.m. On
22 October 8, respondent sent MARALCO Aluminum a letter asking for a
23 fuller explanation of the upset condition called in on October 6,
24 1981. In an October 16 letter back to respondent, appellant indicated
25 it must have been caused by wet scrap since it only lasted a short

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 81-179

1 period of time. Respondent was not satisfied with the response
2 letter. Consequently, on November 2, 1981, respondent sent to
3 appellant by certified mail a Notice and Order of Civil Penalty No
4 5330 of \$250 for the alleged violation of Section 9.03(b)(1) of
5 respondent's Regulation I. Appellant and respondent engaged in a
6 discussion by telephone about this and other matters. The Notice and
7 Order of Civil Penalty No. 5330 is the subject of this appeal

8 V

9 Any Conclusion of Law which should be deemed a Finding of Fact is
10 hereby adopted as such.

11 From these Findings the Board enters these

12 CONCLUSIONS OF LAW

13 I

14 Section 9.03(b) of respondent's Regulation I makes it unlawful for
15 any person to cause or allow the emission of any air contaminant for a
16 period or periods aggregating more than three minutes in any one hour
17 which is:

- 18 (1) Darker in shade than that described as No. 1
19 (20% density) on the Ringlemann Chart, as published by
20 the United States Bureau of Mines; or
21 (2) Of such opacity as to obscure an observer's
22 view to a degree equal to or greater than does smoke
23 described in Subsection 9.03(b)(1).

24 Respondent showed that appellant violated Section 9.03(b) as alleged.

25 II

26 Appellant's defense was that the plume was steam resulting from a
27 furnace of very wet scrap and that an upset condition had been called
in anyway. Appellant testified that much of his scrap in early

1 October (in this case shredded aluminum beverage cans) was saturated
2 with water because of the seasonal heavy rains.

3 III

4 Section 9.16 must be reasonably construed. "Immediately notify
5 the agency of such occurrence together with the pertinent facts
6 relating thereto regarding nature of problem" means that the
7 respondent must determine "pertinent facts thereto." This requires a
8 few moments of review (or some time, depending on the circumstances)
9 before telephoning. It also requires answering an inquiry for further
10 information later.

11 The Board concludes that appellant's telephone call at 8:26 a.m.
12 constitutes immediate and proper notification of an upset condition.
13 Therefore, the violation should be excused and the civil penalty
14 should be vacated.

15 IV

16 Any Finding of Fact which should be deemed a Conclusion of Law is
17 hereby adopted as such.

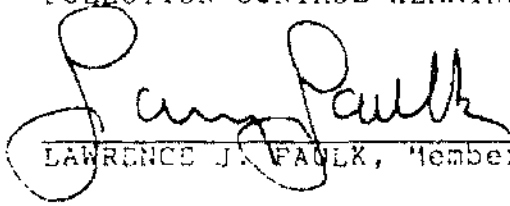
18 From these Conclusions the Board enters this
19
20
21
22
23
24
25

ORDER

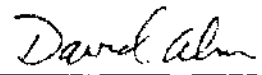
Order and Notice of Civil Penalty No 5330 for \$250 issued to Materials Reclamation, Inc., in violation of respondent's Regulation I is hereby vacated.

DONE at Lacey, Washington, this 4th day of January, 1983.

POLLUTION CONTROL HEARINGS BOARD


LAWRENCE J. FAULK, Member


GAYLE ROTHROCK, Chairman


DAVID AKANA, Lawyer Member

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 81-179